

**Letter of Findings Number: 09-0604P
Sales Tax – Negligence Penalty
For the Periods February 2009**

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a group of five companies doing business in Indiana. Taxpayer attempted to pay its February 2009 sales tax via the Indiana Department of Revenue ("Department") "INtax" system. When Taxpayer attempted to pay the tax, the INtax system "asked" if Taxpayer wanted to make a payment, Taxpayer selected "yes." However, Taxpayer did not click another icon which would have actually executed the payment. As a result, Taxpayer did not pay its February 2009 sales tax.

When Taxpayer discovered its mistake, it paid the February 2009 liabilities. However, the Department assessed penalty and interest based on the late payment. Taxpayer protested the penalty.

The Department sent a letter to Taxpayer stating that Taxpayer could request a hearing by replying to the letter within twenty (20) days of the date of the letter. Taxpayer did not reply to the Department's letter. Due to Taxpayer's failure to reply, this Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on the use tax imposed as a result of the Department's audit.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer explained that it was a new user of the INtax system and did not realize that its February 2009 payment had not in fact been made during Taxpayer's return filing process until it attempted to make its March 2009 payment. Upon noticing the error, Taxpayer states that it immediately paid the tax and interest liabilities.

Even though Taxpayer's error was not intentional, Taxpayer has not provided sufficient legal or factual ground to demonstrate that its failure to pay was the result of ordinary business care. Thus, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

Posted: 02/24/2010 by Legislative Services Agency
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